

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 397 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURSING NARANBHAI DAHIMA

Versus

STATE OF GUJARAT

Appearance:

MS SUDHA R GANGWAR for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/02/97

ORAL JUDGEMENT

The accused petitioner is facing trial for offence under Bombay Prohibition Act. He applied for return of muddammal autorickshaw bearing No.GJW 5436.The learned Magistrate rejected the application and hence the petitioner preferred Revision Application which has also been rejected by the order dated 11.4.1996 passed by the learned Addl.Sessions Judge, Amreli. It is contended by

the learned Advocate for the petitioner that the learned Judge has committed error in rejecting the application only on the ground that the offence under the Bombay Prohibition Act is of a serious nature. She also submitted that the petitioner is a poor man and the muddammal autorickshaw is the only source of income. On the other hand, the learned APP supports the order passed by the courts below.

2. I have considered the rival contentions of the parties. Seriousness of the offence can be one of the considerations for the delivery of the muddammal during the pendency of the trial, but this cannot be a sole reason. No useful purpose can be served by keeping the muddammal autorickshaw in the police custody, where there can be no proper care, and by the time the trial is over, the autorickshaw will be reduced to a scrap.

3. In view of the aforesaid, this Criminal Misc.Application is allowed. It is directed that the muddammal autorickshaw bearing No.GTW 5436 shall be delivered to the petitioner provided -

- (1) He furnishes a solvent security in the sum of Rs.25,000/- to the satisfaction of the Judicial Magistrate First Class, Kodinar,
- (2) That the petitioner shall not transfer or alienate the said autorickshaw during the pendency of the trial and he will produce the same before the court as and when he is called upon to do so.
- (3) He will not make any substantial change in the muddammal autorickshaw.

Rule made absolute to the aforesaid extent. Direct Service permitted.

....